

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 705 of 2005 (S/S)

1. B.K. Tyagi, S/o Late ShrI K.S Tyagi
R/o 209/1, Krishan Nagar Extn.
Dehradun.
2. JohNson Masih, S/o Late B. Masih
C/o Mrs. Munni Devi BishT
138, Balliwala, Raj Market
P.O. Kanwali, Dehradun. .

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.....Petitioners

Versus

1. State of Uttaranchal throUgh
Principal, Industrial Development Department
Uttaranchal Shashan

Dehradun.

2. State of Uttar Pradesh through Secretary
IndusTrial Development (Geoplogy & Mining)
Annexee Bhawan, Lucknow.
3. Director Mines and Mineral Unit
DirEctorate of Industries, Dehradun.
4. State Reorganisataion CommIssioner
Uttaranchal, Dehradun. Respondents.

SHri B.P.S. Mer, Advocate holding brief of Shri M.C. Pant, learneD counseL for the petitioner.

Shri Sudhanshu Dhulia, SpeciaL counseL for respondents No. 1, 3 and 4.

Smt. Bina Pande, learnEd standIng counseL for respondent No. 2.

Hon'ble Prafulla C. PAnt, J.

By means of this petition, moved under Article 226 of Constitution of India, the petitioners have sought writ In the nature of certiorari quashing the order dated 31

07.2004 (Annexure-1 to the writ petition), whereby the petitioners were relieved for the State of Uttar Pradesh even before final allocation was made by the Government of India. A mandamus has also been sought to permit the petitioners to work in Uttaranchal till the final allocation is made and to pay their salary with arrears in respect of the period till they are permitted to join as per the final allocation list.

2. Heard learned counsel for the parties.

3. Brief facts of the case, As narrated in the writ petition are that petitioner No. 1 was a Senior Clerk, and petitioner No. 2 was a Mechanic, promoted to the post of Driller in the Industrial Development Department/Mining Department, working from the date prior to the creation of State of Uttaranchal. Both of them opted for the State of U.P. after the division of the State. However, names of the petitioners did not figure in the tentative final allocation list. It is alleged by the petitioners that meanwhile they were unilaterally relieved by the Government of Uttaranchal, vide its order No. 1681/1 K/2004-106-m K/04 dated 31.07.2004, for the State of U.P. But they were not permitted to join their duties in the State of U.P. and had to come back to State of Uttaranchal. The petitioners further alleged that they were not even permitted to rejoin their duties in the State of Uttaranchal. In the circumstances, they filed this writ petition for the aforesaid reliefs.

4. The petition is contested by the respondents No. 1 and 2, who filed their separate counter affidavits. In the

counter affidavit, filed on behalf of respondent No.2, it is stated that relieving of the petitioner on the part of State of Uttaranchal, was without acceptance of the options of the petitioners for State of U.P. As such respondent No. 2 could not have allowed them to join duty in said State before they were finally allocated State of U.P. It is admitted that answering respondent No. 2 did not accept the joining report of the petitioners and returned them to State of Uttaranchal vide its letter dated 20.04.2005. It is further stated in the counter affidavit of the answering respondent that there was no vacant post available to absorb the petitioners with the State of U.P.

5. On behalf of respondent No. 3, Director, Mines and Minerals Unit, Directorate of Industries, a separate counter affidavit was filed by Shri Gangadhar Prasad, Deputy Director of said Department. It is admitted in the counter affidavit, filed on behalf of respondent No. 3 that the petitioners were working in the State of Uttaranchal and were relieved to the State of U.P. Vide order dated 31.07.2004 (Annexure-1 to the writ petition). It is also admitted that the State of U.P. did not permit them to join there. It is also not disputed that the names of the petitioners did not figure in the tentative final allocation list. But it is stated that the liability to pay salary for the period after they were relieved unilaterally from the State of Uttaranchal, is on the State of U.P. Defending the unilateral relieving of the petitioners it is stated that they did not belong to hill sub cadre, which existed prior to the creation of State of Uttaranchal.

6. Most of the facts alleged in the writ petition are admitted between the parties that the petitioners were employees of Department of Industrial Development, who were working within the territory for State of Uttaranchal on the appointed day i.e. 11.09.2000. It is also not disputed that the petitioners were unilaterally relieved by the State of Uttaranchal without being finally allocated the said State by the Government of India under U.P. Reorganisation Act, 2000. It is also not denied, rather it is admitted between the parties that the State of U.P. did not accept the joining of the petitioners, as they were not allocated said State, by Government of India.

7. In the above circumstances, the action on the part of the State of U.P. (respondent No. 2) was justified, and that of State of Uttaranchal was illegal, as the petitioners were relieved without taking consent from the State of U.P. and /or without allocation for successor State of U.P. by the Government of India. The petitioners were made unnecessarily a shuttle-cock between two states for the fault on the part of State of Uttaranchal.

8. During the pendency of writ petition, it is admitted to the learned counsel for the parties that the final allocation list has been published on 17.05.2006 and petitioner. No. 1 B.K. Tyagi has been allocated the State of Uttaranchal while petitioner No. 2 Johnson Masih, has been allocated State of U.P. Consequently, they have submitted their joining report in the respective states. The controversy left relates to arrears of salary for the period when the petitioners were unilaterally relieved by the State

of Uttaranchal to the State of their joining after final allocation to the successor State by the Government of India. Since the petitioners had to suffer due to the erroneous approach on the part of State of Uttaranchal, who relieved the petitioners unilaterally without taking consent from the State of U.P. or without waiting for the final allocation from the Government of India, as such, the liability to make payment of arrears of salary for the above disputed period lies with the Government of Uttaranchal.

9. Therefore, for the reasons, as discussed above, the writ petition is disposed of with the direction that the petitioners shall be paid arrears of salary by the State of Uttaranchal for the period from the date of 31.07.2004, whereafter they were unilaterally relieved for the State of U.P. till the date of their joining in pursuance to the final allocation list, published by the Government of India in the concerned states allocated to them. It is further directed that the successor states to which the petitioners are allocated shall permit them to join their duties without delay.

Dt. 02.12.2006
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(Prafulla C. Pant, J.)